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W11a

Staff: Ruby Pap
Staff Report: November 23, 2005
Hearing Date: December 14, 2005
Commission Action:

TO: Commissioners and Interested Parties

FROM: Peter M. Douglas, Executive Director
Robert S. Merrill, North Coast District Manager
Ruby Pap, Coastal Planner

SUBJECT: **Mendocino County LCP Amendment No. MEN-MAJ-1-02 PART C (Major),
Hanna/Dickson (Meeting of December 14, 2005)**

SYNOPSIS

Amendment Description

Mendocino County LCP Amendment No. MEN-MAJ-1-02 proposed site-specific changes to provisions of the County's certified Local Coastal Program (LCP) affecting four different locations within the coastal zone, Parts A-D. This staff recommendation addresses Part C of the amendment. Commission hearings on Parts A and B of the amendment were held at the February 18, 2005 Commission meeting, and the hearing on Part D was held at the March 17, 2005 Commission meeting. Part C of the changes proposed by Amendment No. MEN-MAJ-1-02 is as follows:

1. PART C (GP 11-2001/R 12-2001, HANNA/DICKSON). APN 118-320-02. Change the coastal plan land use classification of a 1.2-acre property located 0.75 mile north of Mendocino, west of County Road #500D (aka Old Highway 1) from OS (Open Space) denoted as DPR (Department of Parks and Recreation) on the Coastal Land Use Map, to Rural Residential- 5 acre minimum (RR-5 [2 acre minimum]) and rezone the site from OS to RR-5 [RR-2].

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 2**

Staff Note

1. Revised Staff Recommendation

On August 26, 2005, Staff mailed an initial staff report for the subject amendment to the Commission for the September 15th hearing. On September 12th staff received a letter from Mendocino County requesting that the hearing be postponed to the December 2005 hearing in order to provide ample time for the County to submit additional information concerning the staff's recommended suggested modifications and to discuss options for addressing staff's concerns. More specifically, staff had concerns regarding the validity of the three unconditional certificates of compliance issued for the subject property, which bring the maximum development potential for the subject property to three houses. Subsequently, staff received a letter from the County, dated September 12th, explaining the basis for the County's issuance of the three COCs. Staff has reviewed this information and believes the County's explanation eliminates the specific concern the staff had discussed in the original staff report about the COCs compliance with Section 17-101 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code. Although the County will need to consider the legality of each lot when future development is proposed as it should do in the review of any application for a coastal development permit, the staff is no longer aware of any specific inconsistency of the approved COCs with the state and local regulations regarding the issuance of non-conditional COCs. Thus staff believes it is no longer necessary to include a suggested modification that would add text to the LUP that would specifically require the County to consider the consistency of the subject APNs with Section 17-101 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code prior to the approval of any future development on the subject property. Therefore, in this revised staff recommendation, Suggested Modification No. 1 has been revised to delete the above-described requirement and corresponding changes have been made to the findings. The portion of Suggested Modification No. 1 requiring the permit issuing authority and the applicant substantiate that adequate water supply and septic capacity to support proposed future development prior to CDP approval remains, because staff has not received additional evidence determining that these services are available to support three potential residences. This revised staff report also includes a new exhibit (6), which includes the County's correspondence.

Summary of Staff Recommendation

The staff recommends that the Commission, upon completion of a public hearing, **deny Part C (Hanna/Dickson) of the amendment request as submitted and certify the amendment request with suggested modifications.** The amendment would change the coastal plan land use classification of a 1.2-acre property located 0.75 mile north of Mendocino, west of County Road #500D (aka Old Highway 1) from OS (Open Space) denoted as DPR (Department of Parks and Recreation) on the Coastal Land Use Map, to Rural Residential-5 acre minimum (RR-5 [2 acre minimum]) and rezone the site from OS to RR-5 [RR-2] (exhibit no. 3). While the subject 1.2 acres are classified as Open Space and denoted as "DPR" on the Coastal Land Use Map, and were included on a 1974 California Department of Parks and Recreation (DPR) acquisition map,

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 3**

the property has always been privately owned, was never acquired by DPR, and DPR currently has no plans to acquire the property.

The subject site is a bluff top property on a point that faces south towards the Town of Mendocino and Mendocino Headlands State Park. Russian Gulch State Park borders the property on the north side and residential parcels neighbor the property to the southeast. The site contains a small residence on its southeastern side. A large portion of the lot is wooded, with open areas in the middle and the northwestern side.

In 2001, the County issued three unconditional Certificates of Compliance (COCs) for the subject property, recording three Assessor's Parcel Numbers (APNs). In general, a parcel qualifies for issuance of an unconditional Certificate of Compliance if the real property in question complies with the provisions of the Subdivision Map Act and County or City Ordinances enacted pursuant thereto. Based on an apparent inconsistency with section 17-102 of Title 17 of Article XV of the Mendocino County Zoning Code, a section specifically addressing the process to legalize lots prior to 1972, Commission staff had originally recommended that a suggested modification be imposed that would add text to the LUP that would specifically require the County to consider the consistency of the subject APNs with Section 17-101 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code prior to the approval of any future development on the subject property. Since preparation of the original staff report, the County submitted a letter explaining the basis for the County's issuance of the COCs and why the County does not believe Section 17-101 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code is applicable to the subject property. Staff believes the County's explanation eliminates the specific concern the staff had discussed in the original staff report about the COCs compliance with this section of the County code. Although the County will need to consider the legality of each lot when future development is proposed as it should do in the review of any application for a coastal development permit, the staff is no longer aware of any specific inconsistency of the approved COCs with the state and local regulations regarding the issuance of non-conditional COCs. Thus staff believes it is no longer necessary to include a suggested modification that would add text to the LUP that would specifically require the County to consider the consistency of the subject APNs with Section 17-101 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code prior to the approval of any future development on the subject property. Therefore, in this revised staff recommendation, Suggested Modification No. 1 is modified to delete the above-described requirement and corresponding changes to the findings have been made.

The County considers these APNs recognized by the COCs to be "legal non-conforming lots" that would be allowed to be developed in accord with the zoning regulations applicable to the property regardless of their lot sizes. Therefore, the maximum development potential on the subject property, if the land use change were to be certified, would be three residences, although the applicant has indicated his desire to merge the three APNs into two, and to develop two houses (an increase of one house over the current configuration).

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 4**

The development of additional homes on the subject property would not be consistent with the principal and conditional uses allowed under the current OS land use plan designation and zoning. According to Mendocino coastal zoning code, the property owner could theoretically develop employee caretaker housing units on the APNs, but this request is unlikely to be approved at the coastal development permit stage because no park exists on the subject property, and therefore there is no need for an employee caretaker to live on the property. Although the existence of the three COCs on the property in combination with the re-designation and rezoning of the property to the proposed rural residential would allow up to two more residences, staff recommends approval of the subject LCPA with suggested modifications because as modified to require that any future proposed development demonstrate proof of adequate water supply and adequate septic and leachfield capacity prior to approval of a coastal development permit, the proposed amendment is consistent with the Coastal Act because: (1) a change from OS to RR-5 [RR-2] would not allow another parcel to be created that could support additional residential development as the subject property is too small to further subdivide; (2) the traffic impacts to Highway 1 would still be insignificant; and (3) a backdrop of trees and the existing residential development along the point would still help to blend the development into its surroundings and protect scenic views of the bluff from the headlands, in a manner subordinate to the character of its setting.

Coastal Act Section 30250 requires that new development be located in or near existing developed areas able to accommodate it and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The County has submitted preliminary information to substantiate capacity for sewage disposal on site to support two new residences, but no information has been submitted as part of this application to show that this system could support a third residence, if developed, which would be the ultimate development potential on the subject property. Further, the County did not submit a specific proof of water test to support three residences as part of this application, and there is some evidence to suggest that there may not be adequate water available on the site to support the residential development, including the fact that the existing well ran dry. Therefore, as the availability of services is of particular concern with respect to future development of the subject property, staff recommends that the Commission impose Suggested Modification No. 1, which would add Policy 4.7-4 to the “Big River Planning Area” area specific policies on page 173 of the LUP, requiring that adequate water supply and adequate septic and leachfield capacity be determined prior to approval of a coastal development permit for any future proposed development on the subject property as required by the LCP and consistent with Coastal Act 30250.

Suggested Modification No. 1:

Policy 4.7-4 In addition to all the required findings of consistency with the LCP, prior to approval of any coastal development permit for any future development proposed on APNs 118-32-10, 11, and 12, located at west of County Road #500D (a.k.a Old Highway One), approximately 0.75 mile north of Mendocino, the permit issuing authority and the applicant shall substantiate that APNs 118-32-10, 118-32-11, 118-32-12 have adequate water supply and septic capacity to support the proposed development.

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 5**

As modified, the proposed LUP amendment will have no adverse impacts on coastal resources and is consistent with the Coastal Act. In addition, as modified, the proposed zoning district allows for the same range of principally permitted and conditional uses as the proposed LUP designation as modified. Therefore, the proposed Implementation Plan amendment will conform with and adequately carry out the LUP as proposed to be amended.

Analysis Criteria

To approve the amendment to the Land Use Plan (LUP), the Commission must find that the LUP, as amended, will remain consistent with the Chapter 3 policies of the Coastal Act. To approve the amendments to the zoning ordinance, the Commission must find that the Implementation Plan (IP), as amended, will conform with and is adequate to carry out the LUP.

Additional Information:

For further information, please contact Ruby Pap at the North Central Coast District Office (415) 904-5260. Correspondence should be sent to the North Coast District Office at the above address.

MOTIONS, STAFF RECOMMENDATIONS, RESOLUTIONS AND SUGGESTED MODIFICATIONS

I. MOTIONS, STAFF RECOMMENDATIONS, AND RESOLUTIONS FOR LCP AMENDMENT NO. MEN-MAJ-1-02 Part C

A. DENIAL OF LUP AMENDMENT NO. MEN-MAJ-1-02 PART C AS SUBMITTED:

MOTION I: *I move that the Commission Certify Land Use Plan Amendment No. MEN-MAJ-1-02 Part C as submitted by the County of Mendocino.*

STAFF RECOMMENDATION TO DENY:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION I TO DENY CERTIFICATION OF LUP AMENDMENT NO. MEN-MAJ-1-02 PART C AS SUBMITTED:

The Commission hereby denies Land Use Plan Amendment No. MEN-MAJ-1-02 Part C as submitted by the County of Mendocino and adopts the findings set forth below on the

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 6**

grounds that the amendment does not conform to the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan Amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures, which could substantially lessen any significant adverse impact, which the land use plan amendment may have on the environment.

B. CERTIFICATION OF LUP AMENDMENT NO. MEN-MAJ-1-02 PART C WITH SUGGESTED MODIFICATIONS:

MOTION II: *I move that the Commission certify Land Use Plan Amendment No. MEN-MAJ-1-02 Part C for the County of Mendocino if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY WITH SUGGESTED MODIFICATIONS:

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

RESOLUTION II TO CERTIFY WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies Land Use Plan Amendment No. MEN-MAJ-1-02 Part C for the County of Mendocino if modified as suggested and adopts the findings set forth below on the grounds that the land use plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the land use plan amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the land use plan amendment may have on the environment.

C. APPROVAL OF IMPLEMENTATION PLAN AMENDMENT NO. MEN-MAJ-1-02 PART C (HANNA/DICKSON), AS SUBMITTED:

MOTION III: *I move that the Commission reject Implementation Program Amendment No. MEN-MAJ-1-02 PART C for the County of Mendocino as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 7**

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION III:

The Commission hereby certifies Implementation Program Amendment No. MEN-MAJ-1-02 PART C for the County of Mendocino as submitted and adopts the findings set forth below on grounds that the Implementation Program will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.

II. SUGGESTED MODIFICATIONS

Suggested Modification No. 1:

Add new policy 4.7-4 to the “Big River Planning Area” area specific policies on page 173 of the LUP as follows:

Policy 4.7-4 In addition to all the required findings of consistency with the LCP, prior to approval of any coastal development permit for any future development proposed on APNs 118-32-10, 11, and 12, located at west of County Road #500D (a.k.a Old Highway One), approximately 0.75 mile north of Mendocino, the permit issuing authority and the applicant shall substantiate that APNs 118-32-10, 118-32-11, 118-32-12 have adequate water supply and septic capacity to support the proposed development.

III. DESCRIPTION OF SITE AND LCP AMENDMENT

Part C (GP 11-2001/R 12-2001, Hanna/Dickson)

The proposal for Part C would change the Coastal Land Use Plan classification of a 1.2-acre parcel located 0.75 mile North of Mendocino, West of County Road #500D (aka. Old Highway 1) from OS (Open Space) denoted as DPR (Department of Parks and Recreation) on the Coastal Land Use Map, to Rural Residential- 5 acre minimum (2-acre minimum) (RR-5 [RR-2]) and rezone the site from OS to RR-5 [RR-2]). Lands to the north, also classified as OS-DPR, are within Russian Gulch State Park. While the subject 1.2 acres are classified as Open Space and denoted as “DPR” on the Coastal Land Use Map, and the State Department of Parks and

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 8**

Recreation's staff indicated to County staff that the subject parcel was included on a 1974 State Park acquisition map, it was never acquired by the State Department of Parks and Recreation (DPR), and according to the County, DPR currently has no plans to acquire the property.

The subject site is a bluff top property on a point that faces south towards the Town of Mendocino and Mendocino Headlands State Park. Russian Gulch State Park borders the property on the north side and residential parcels neighbor the property to the southeast. The property is currently developed with a residence on its southeastern side, and this existing residence could be re-modeled and upgraded under the current OS designation because it is a legal non-conforming use. A large portion of the lot is wooded, with open areas in the middle and the northwestern side. The site is within a designated highly scenic area. No known environmentally sensitive habitat exists on the subject property.

In 2001, the County issued three unconditional Certificates of Compliance (COCs) for the subject property, recording three Assessor's Parcel Numbers (APNs). The original APN for the property, 118-320-02, has been retired, and three new APNs have been issued. The southern APN 118-320-11 is currently developed with a single family dwelling, while the other APNs 118-320-10 and 118-320-12 are undeveloped. The County Assessor's Office records show the total property area to be 1.2 acres. The sizes of the three APNs are as follows: 118-320-10 = 0.6 acre, 118-320-11 = 0.4 acre, and 118-320-12 = 0.2 acre. The applicant contends in a letter to the County that, according to a recent survey, the combined acreage of the three parcels is approximately 3.031 acres, however the County Assessor's office has not confirmed nor recorded this acreage. The owners have also indicated their desire to merge and resubdivide the three APNs into two legal lots and allowing for the construction of a total of two houses on the property.

The site is currently designated as a "critical water resources zone" according to the County's groundwater study. The proposed RR-5 (RR-2) designation would allow one residence to be developed per 5-acre parcel, or per 2-acre parcel if ground water tests prove that there is adequate water supply to support this density. Given that the three APNs do not total four or more acres, none of the APNs could be subdivided under the proposed RR-5 [RR-2]) classification, and the proposed RR-5 [RR-2] designations are consistent with the RR-5 [RR-2] designations on the private property to the south.

Under County zoning code, the three APNs resulting from the County issued COCs are considered "legal non-conforming lots" and could be developed in accord with the zoning regulations on the property regardless of the lot size. In this case, if the land use designation and zoning were converted from OS to RR-5 (RR-2) as proposed, the property could theoretically be developed with three residences with coastal development permits, one each on the three APNs. If the three legal non-conforming lots instead remain designated as Open Space, according to Mendocino coastal zoning code, the property owner could theoretically develop, with a coastal development use permit, three open space employee caretaker housing units, one each on the three APNs recognized by the COCs. This request is unlikely to be approved at the coastal development permit stage, however, because no park exists on the subject property, and therefore

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 9**

there is no need for an employee caretaker to live on the property. Section 20.316.030 of the Mendocino County Coastal Zoning Code defines employee caretaker housing as:

One (1) single-family dwelling or a single trailer coach may be permitted by conditional use permit on a lot or building site when Open Space or Visitor Accommodations and Services or Industrial use is existing on the premises or a permit has been issued for the Open Space or Visitor Accommodations and Services or Industrial use when occupied exclusively by a caretaker or manager or superintendent of such Open Space or Visitor Accommodations and Services or Industrial use and his/her family.

In addition, if left designated as open space, the three APNs could theoretically be developed with coastal civic use types (on-site alternative energy facilities, community recreation, minor impact utilities), coastal commercial use types (commercial recreation: outdoor sports and recreation), coastal visitor accommodations and services use types (campground, hostel, organized camp, recreational vehicle campground), or coastal agricultural use types (limited forest production and processing, row and field crops, and tree crops). However, it is not known if any of these civic, commercial, visitor accommodating services, and agricultural use types would be economically viable for the subject property.

IV. LAND USE PLAN FINDINGS

A. Standard of Review

To approve the amendments to the LUP, the Commission must find that the LUP, as amended, will remain consistent with the Chapter 3 policies of the Coastal Act.

B. Certificates of Compliance (COCs)

In 2001, the County issued three unconditional Certificates of Compliance (COCs) for the subject property, recording three Assessor's Parcel Numbers (APNs). In general, a parcel qualifies for issuance of an unconditional Certificate of Compliance if the real property in question complies with the provisions of the Subdivision Map Act and County or City Ordinances enacted pursuant thereto. The validity of the unconditional COCs affects the maximum potentially allowable density of residential development on the site and the corresponding cumulative impact of such residential buildout on coastal resources and services. Under the proposed LUP and zoning change to RR-5 [RR-2], The Coastal Zoning Code allows a maximum of one residence per legal parcel. Therefore, if the three unconditional COCs for the subject property were valid, the three APNs would be "legal non-conforming lots" and allowed to be developed in accord with the zoning regulations on the property regardless of their deficient lot size. Therefore the maximum development potential on the subject property would be three residences, although the applicants have indicated their desire to merge the three APNs into two, and to develop two residences.

The three unconditional COCs appear to meet applicable standards governing the issuance of COCs, including provisions of State law and the County's zoning ordinance (some of the applicable zoning code provisions are not part of the County's certified LCP). County Staff has

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 10**

informed Commission staff that the parcels were conveyed by separate documents prior to March 4, 1972 as part of a division creating fewer than five parcels, they complied with the Subdivision Map Act at the time of their creation, they are not subject to merger, and the owner did not voluntarily combine them. Deeds describing the three APNs exist as far back as 1892, 1901, and 1937.

Prior to the opening of the public hearing for the proposed LCP amendment at the September 15, 2005 Commission meeting, questions remained regarding how the issued unconditional COCs conformed with Sections 17-101 and 17-102 of Title 17 "Division of Land Regulations," Article XV of the Mendocino County Zoning Code. Specifically, these concerns were that Section 17-102 of Title 17 Article XV of the Mendocino County Zoning Code states that a Certificate of Compliance will be issued if the parcels in question meet the standards set forth in Section 17-101. Among other things, these standards require that for areas where neither water or sewage disposal services are provided by a publicly controlled political entity, the minimum lot size shall be 40,000 square feet, *regardless of the minimum lot size requirements of the zoning ordinances applicable at the time a lot was created.*

Sec. 17-101 Standards.

For the sole purpose of determining compliance with this Chapter, County zoning ordinances and the Map Act, any lot meeting the requirements set forth in this section shall be deemed a legally conforming lot for which development permits may be issued.

*(A) **Legal Status.** Each such lot must have been created by deed or contract of sale, in either case fully executed prior to March 4, 1972 and recorded not later than November 29, 1977. In lieu of such recordation, proof may be submitted to the satisfaction of the Planning Division that such deed or contract of sale was indeed executed prior to March 4, 1972.*

*(B) **Lot Size.** Regardless of the minimum lot size requirements of the zoning ordinances applicable at the time a lot was created or on the effective date of this ordinance, each such lot must conform to the following minimum lot size requirements:*

(1) Where both water and sewage disposal services are provided by a publicly controlled political entity, such as the County, a City or district: six thousand (6,000) square feet.

(2) Where either water or sewage disposal services are provided by a publicly controlled political entity, such as the County, a City or a district: twelve thousand (12,000) square feet.

(3) Where neither water or sewage disposal services are provided by a publicly controlled political entity, such as the County, a City or a district: forty thousand (40,000) square feet. [Emphasis added.]

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 11**

In the Hanna/Dickson case, the lot sizes are: 0.60 acre for APN 118-320-10, 0.40-acre for 118-320-11, and 0.20 acre for 118-320-12. None of these appeared to comply with the minimum lot size provision of 40,000 square feet for areas where neither water or sewage disposal services are provided by a publicly controlled political entity (Section 17-101(b)(3)).

On May 5, 2005, Commission staff mailed a letter to the Mendocino County Coastal Permit Administrator asking for the County's basis for overcoming the apparent inconsistency of the APNs recognized by the COCs with the minimum parcel size requirements of Section 17-101(b)(3) (exhibit no. 5). Commission staff received a response from the Director of Mendocino County Planning and Building Services, dated September 12, 2005 (exhibit 6), explaining this basis. He stated that before determining if the APNs meet the criteria in Sections 17-101 and 102, one must first determine, based upon Section 17-100, Purpose and Intent, if 17-101 and 102 are applicable to the APNs. The purpose of the ordinance in question is to establish a mechanism and process to recognize and legitimize parcels that were illegally created prior to March 4, 1972 (when Subdivision Map Act requirements were implemented). Section 17-100 specifically states:

(A) The Board of Supervisors recognizes that a substantial number of lots were created in the years preceding March 4, 1972, prior to which date it was permissible under the Map Act and County Ordinance to divide a parcel of property into two lots without County approval.

(B) Due to confusion, misunderstanding and a general unfamiliarity with both State and County regulations, many lots were created prior to March 4, 1972, which did not conform with then existent regulations.

(C) For the most part, such lots, although improperly created, have now passed to innocent purchasers and in many cases have been developed. It is the intent of the Board to permit the reasonable use of such lots so long as such use is not contrary to public health and public safety. (Ord. No. 2067, adopted 1977)

The language of Section 17-100 indicates that Sections 17-101 and 17-102 are not intended to be applied to legally created APNs. For example, Subsection B states, "...many lots were created prior to March 4, 1972 which did not conform with then existing regulations. In addition, Subsection C, states: "For the most part, such lots, although improperly created, have now passed to innocent purchasers..." The use of the terms "did not conform with the existing regulations," "improperly created" and "innocent purchasers" indicate that Sections 17-101 and 102 are only applicable to parcels that were illegally created. The Commission agrees that Title 17 is not intended to apply to lots that are legally created and is unaware of any other issues regarding lot legality at the subject site.

The August 2005 staff report for the subject application recommended that the Commission impose a suggested modification requiring that prior to approval of any future coastal development permit(s) for the site, the County and applicants must substantiate that conditional

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 12**

certificates of compliance and a coastal development permit would not be necessary to legalize APNs 118-32-10, 118-32-11, 118-32-12, including, but not limited to, consideration of the consistency of the subject APNs with Section 17-101 of Title 17 Article XV of the Mendocino County Zoning Code. However, since the Commission staff has received the additional information on the subject APNs from the County, described above, demonstrating that Sections 17-101 and 17-102 do not apply to the subject COCs, the Commission finds that it is no longer necessary to impose such a suggested modification demonstrating compliance with Sections 17-101 and 17-102. Moreover, the Commission notes that as it should in the review of any coastal development permit application, the County must consider the legality of the APNs at the time it reviews any coastal development permit for any new residence on these APNs. Therefore, any remaining questions about the legality of the subject APNs can and should be reviewed at that time.

The Commission finds that the Commission's certification with suggested modifications of Mendocino County LCP Amendment No. 1-02 Part C (Hannah/Dickson) shall not be construed as an independent determination by the Commission that the COCs issued for the subject property by the County are legally valid.

C. New Development

Section 30250(a) of the Coastal Act requires that new development be located in or near existing developed areas able to accommodate it and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to concentrate development to minimize adverse impacts on coastal resources.

Regarding Part C (Hanna/Dickson), the 1.2-acre property currently has one residence, one onsite well, and one septic system. The proposed amendment would allow for a total of up to three residences on these APNs. However, the applicant has indicated his desire to merge the three APNs into two, and to develop two residences. As noted above, the subject property currently is developed with one house. Commission certification of the amendment request to change the land use designation and zoning from OS to RR-5 (RR-2) would not further increase the density on the site. Since the subject property is smaller than four acres, the property is too small to subdivide whether it consists of three legal parcels or one, (it is 1.2 acres, the rural residential designation would have a minimum lot size of two acres), and a change from OS to RR-5 (RR-2) would not allow another parcel to be created that could support another house in addition to the three residences potentially allowed by the recorded COCs. The County has submitted preliminary information to substantiate capacity for sewage disposal on site to support two new residences. According to soil surveys and ground water monitoring, there is sufficient leachfield area and capacity on the property to support two three-bedroom houses. While the soils on the property have been shown to be adequate to support some sort of leachfield system, no information has been submitted as part of this application to show that this system could support a third residence.

The County did not submit a specific proof of water test as part of this application. Written correspondence from property owners to the County indicates that the existing well was supplemented by a new well, which was tested at 0.9 gallons per minute. In critical water

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 13**

resource areas, such as the subject property, the County Environmental Health Division requires that wells provide one gallon per minute of water per residence. This requirement can be reduced to ½ gallon per minute if supplemented with water storage system of 2,500 gallons. Based on this information, it appears that 0.9 gallons per minute of water would not provide enough water to support three homes, which is the ultimate development potential on the property if the issued COCs are legally valid. Moreover, 0.9 gallons per minute would not support two homes, which is what the applicant has indicated he intends to construct on the property. Further, there is other evidence to suggest that there may not be sufficient water to support the intended future residential development on the site. In November 2001 Mendocino County issued a Coastal Emergency Permit (#EM 04-01) and a follow – up coastal development permit (CDP# 04-02) to drill the supplemental well on the property. According to the staff report for CDP #04-02, the parcel had been served by an existing well (which had been hand dug), but it had “run dry,” and it was necessary to drill the new well to rectify the water problem. While the staff report for CDP# 04-02 stated that there is an on-site water source and the well would not adversely affect groundwater resources, it is not clear whether there is sufficient water on site to support three residences on the property. No additional information has been provided to the Commission to prove that there is sufficient water to support future residential development on the site.

Any future residential development on the property would require coastal development permits from Mendocino County, and these permits would be appealable to the Commission because the site is located between the first public road and the sea, it is located in a significant coastal resource area (it is designated “highly scenic” in the LCP), and it is located within 300 feet of a coastal bluff. Current Mendocino County LCP policies require that all development be shown to be adequately served by utilities prior to approval of the coastal development permit, including water and septic. However, County practice has been to require such demonstration of water and septic as a condition of approval of the CDP before issuance of the building permit, rather than as a required finding before approval of the CDP. This current practice does not provide assurance that future residential development on the site, facilitated by the proposed amendment, would be assessed for adequate water supply or septic capacity before approval of the CDP.

For all of the above reasons, the Commission cannot find that the future residential development potential on the site would be adequately accommodated with water or septic service, or that it would not have significant adverse effects on coastal resources. Therefore, the Commission finds that the proposed LUP amendment is inconsistent with Section 30250 of the Coastal Act and must be denied. However, if modified to ensure that future proposed development was thoroughly assessed to ensure that it is adequately accommodated with water and septic services, and that any proposed development will not have a significant impact on coastal resources, and that the appropriate findings are made prior to CDP approval, the amendment would be consistent with Coastal Act Section 30250. Therefore, the Commission imposes Suggested Modification No.1, which adds policy 4.7-4 to the “Big River Planning Area” area specific policies on page 173 of the LUP, and requires that before new development is approved on the subject property, any future proposed development on the subject property must be required to show proof of adequate water supply and adequate septic and leachfield capacity prior to

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 14**

approval of the coastal development permit, as required by the LCP and consistent with Coastal Act 30250.

Suggested Modification No. 1:

Policy 4.7-4 In addition to all the required findings of consistency with the LCP, prior to approval of any coastal development permit for any future development proposed on APNs 118-32-10, 11, and 12, located at west of County Road #500D (a.k.a Old Highway One), approximately 0.75 mile north of Mendocino, the permit issuing authority and the applicant shall substantiate that APNs 118-32-10, 118-32-11, 118-32-12 have adequate water supply and septic capacity to support the proposed development.

Therefore, the Commission finds that proposed LUP amendment Part C as modified is consistent with Coastal Act Section 30250.

D. Highway One Traffic Capacity.

Coastal Act Section 30254 states that it is the intent of the Legislature that State Highway One in rural areas of the coastal zone remain a scenic two-lane road, and that where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development. Section 30250(a) of the Coastal Act also requires that new development not have significant adverse effects, either individually or cumulatively, on coastal resources.

Because the only north-south arterial in coastal Mendocino County is Highway One, the requirements of Section 30254 are a limiting factor on the potential for new development in Mendocino County. In addition, Section 30254 requires that high priority uses of the coast not be precluded by other, lower-priority uses when highway capacity is limited.

Highway capacity has been recognized by the Commission as a constraint that limits new development, as new development generates more traffic that uses more capacity and a lack of available capacity results in over-crowded highways for long periods of time. When it eventually certified the Mendocino County Land Use Plan with Suggested Modifications, the Commission found that too much buildout of the Mendocino coast would severely impact the recreational experience of Highway One and its availability for access to other recreational destination points. The Commission reduced by more than half the number of potential new parcels that could be created under the certified LUP, based on its conclusion that, given the information available at that time, approximately 1,500 new parcels was the maximum number of new parcels Highway One could accommodate while remaining a scenic, two-lane road.

The Commission recognized that in the future, a greater or smaller number of potential new parcels might be more appropriate, given that changes might occur that would affect highway

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 15**

capacity, such as new road improvements, or that development might proceed at a faster or slower pace than anticipated. To provide for an orderly process to adjust the number of potential parcels allowed under the LCP to reflect conditions as they change over time, the Commission approved Policy 3.9-4 of the LUP that required a future review of the Land Use Plan.

Policy 3.9-4 of the County's LUP states that:

Following approval of each 500 additional housing units in the coastal zone, or every 5 years, whichever comes first, the Land Use Plan shall be thoroughly reviewed to determine:

Whether the Highway 1 capacity used by non-resident travel and visitor accommodations is in scale with demand or should be increased or decreased.

Whether the plan assumptions about the percentage of possible development likely to occur are consistent with experience and whether the allowable buildup limits should be increased or decreased.

Whether any significant adverse cumulative effects on coastal resources are apparent.

In response to this policy, in 1994 the County hired a transportation consultant firm to do a study (titled the State Route 1 Corridor Study) that would determine the impact to Highway One traffic carrying capacity from the buildout of the Coastal Element of the General Plan. The study projected future traffic volumes which would be generated by potential development allowed by the Coastal Element in the coastal zone and by potential development from growth areas outside of the coastal zone that affect traffic conditions on Highway One. The County also has initiated additional studies to determine where appropriate density increases could be allowed without overtaxing Highway One's limited capacity.

The Commission has adopted findings in its actions on previous LCP amendments stating that proposed LCP changes that would result in increases in residential density on a first-come, first-served basis would not ensure that highway capacity would be reserved for higher priority coastal land uses. When looked at in isolation, it may not appear that approving any particular proposal for a density increase would have much impact, when the potential for only a few new parcels is created by each such proposal. However, consistent with Section 30250(a) of the Coastal Act, the cumulative impact of numerous LCP Amendments allowing increases in residential density on highway capacity and other coastal resources must also be addressed. Looking at each new project in isolation fails to take into account the effect numerous projects would have if approved in this fashion.

During its review of Mendocino LCP Amendment No. 1-98(Major) during the Commission meeting of September 9, 1998, the Commission expressed concern regarding the approval of any future density-increasing LCP amendments without having the benefit of the complete review called for by LUP policy 3.4-9. Although a comprehensive review of the Land Use Plan has not

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 16**

yet been completed, the County is progressing toward the development of such a study specified by LUP policy 3.4-9.

Part C (Hanna/Dickson) of the proposed amendment would result in potential new residential development, as allowed by the RR-5 [RR-2] designation. The three County-recorded unconditional COCs on the property, if legally adequate, could potentially allow for the residential development of three APNs, an increase of two residences in addition to the one that currently exists on the site, however the applicant has indicated their desire to merge the three APNs into two, which would result in an increase of one potential residence. However, as stated above Commission certification of the amendment request to change the land use designation and zoning from OS to RR-5 [RR-2] would not further increase the density on the site. Since the subject property is too small to subdivide whether it consists of three separate legal parcels or one, (it is 1.2 acres, and the rural residential designation would have a minimum lot size of two acres) a change from OS to RR-5 [RR-2] would not allow another parcel to be created that could support another house in addition to the three residences potentially allowed by the recorded COCs.

Mendocino County staff submitted a Highway One capacity analysis based on having one additional residence on the subject property (for a total of two), stating: “The State Route 1 Corridor Study indicates road segment 13 (Lansing St. to Gibney Lane) is currently and will remain at an acceptable level of service ‘E’ (LOS E) through the year 2020 under the 75/50 development scenario, with reserve capacity of 260 to 500 peak hour trips (pht) northbound/southbound. A cumulative analysis of traffic impacts to State Route 1 resulting from approved Coastal Plan amendments along road segment 13 finds no increase in pht. Increased traffic resulting from approved Coastal Plan amendments along the total corridor is estimated at 94.22 pht; one additional residence (which is indicated as supportable) adding 0.78 pht brings the total to 95 pht, below the 100-trip threshold at which a new traffic study is required.” While this analysis does not address the traffic potential of having a total of three residences, as the recorded COCs would allow, the applicant has indicated his desire to merge the three APNs into two, and to develop a total of two residences (including the existing residence), which would not have any adverse impacts to Highway 1 traffic capacity according to the analysis above. If the applicant were to develop three residences, an additional 0.78 peak hour trips would result, bringing the cumulative total of increased traffic since preparation of the State Route 1 Corridor Study to 95.78 pht, still well within the projected reserve capacity of 260 to 500 pht and traffic would remain at an acceptable level of service ‘E’.

Based on the facts that the traffic impacts to Highway 1 of three residences would be insignificant, the Commission finds that the proposed amendment for Part C (Hanna/Dickson) would have no adverse effect on Highway One traffic capacity and is consistent with Coastal Act Sections 30254 and 30250(a).

E. Visual Resources

Coastal Act Section 30251 states that the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance, and that permitted development

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 17**

shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, and to be visually compatible with the character of surrounding areas. New development in highly scenic areas shall be subordinate to the character of its setting. Section 30250 requires that development be sited and designed to avoid individual and cumulative impacts on coastal resources.

In the case of Part C (Hanna/Dickson), the property is located in a designated “Highly Scenic Area,” which means future development must be subordinate to the character of its setting. Commission staff conducted a site view of the property and observed that the area is heavily wooded, with many trees lining the eastern border of the property, some trees on the bluff side, and others scattered throughout the site. In addition, several homes to the southeast of the subject property are visible through the trees and are part of the visual character of the setting. Upon viewing the property from Headlands State Park in Mendocino, Commission staff visually confirmed that any future residential development which would be allowable, consistent with the certified LCP as amended, would be set against a backdrop of trees and the existing residential development along the point, which would help to blend the development into its surroundings and protect scenic views of the bluff from the headlands, in a manner subordinate to the character of its setting. Further, from the vantage point of Old Highway One to the east of the property, the trees lining the road do not afford significant views of the ocean, and would also help shield future residential development from the passerby. Moreover, any future development on the site would require a coastal development permit, which would require that the proposed project comply with all applicable policies of the certified LCP, including visual resource policies. Any proposed future residence would be analyzed in detail to ensure that its location or design does not block views to the ocean and is subordinate to the character of its setting. Therefore, the Commission finds that the proposed LUP Amendment for Part C (Hanna/Dickson) is consistent with Coastal Act Sections 30250 and 30251 with respect to the protection of visual resources.

V. IMPLEMENTATION PROGRAM FINDINGS:

Part C (Hanna/Dickson) of the proposed amendment would rezone the site from OS to RR-5 [RR-2]. The proposed zoning district allows for the same range of principally permitted and conditional uses as the LUP designations that apply to the property as amended. Therefore, since the Commission has certified the proposed LUP map changes with suggested modifications to the LUP policies, the proposed Implementation Program changes can be approved, since to do so would result in an Implementation Program that would conform with and adequately carry out the amended Land Use Plan designations for each site. Thus, the Commission finds that the proposed Amendment No. 1-02 to the Implementation Plan conforms to and is adequate to carry out the Land Use Plan, as amended with suggested modifications by Mendocino County LCP Amendment No. 1-02.

VI. CEQA:

In addition to making a finding that the amendment is in full compliance with the Coastal Act, the Commission must make a finding consistent with Section 21080.5 of the Public Resources

**MENDOCINO COUNTY LCP AMENDMENT
NO. 1-02 PART C (HANNA/DICKSON) (MAJOR)
PAGE 18**

Code. Section 21080.5(d)(2)(A) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

As discussed in the findings above, Part C of the amendment request as modified is consistent with the California Coastal Act and will not result in significant environmental effects within the meaning of the California Environmental Quality Act.

Exhibits:

1. Part C Regional Location Map
2. Part C Vicinity Map
3. County Resolutions
4. Assessor's Map Depicting Certificates of Compliance
5. May 2005 Letter to County Coastal Permit Administrator Regarding COCs
6. September 2005 County Response Letter to Commission Staff Regarding COCs
7. Additional Correspondence